

§ 1.6012-2

26 CFR Ch. I (4-1-11 Edition)

(ii) *Cases where power of attorney is required.* Whenever a return of income of a nonresident alien individual is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6061-1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874(a) and the regulations thereunder.

(5) *Effective date.* This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012-1(b) (Revised as of January 1, 1967).

(c) *Cross reference.* For returns by fiduciaries for individuals, estates, and trusts, see § 1.6012-3.

(Sec. 1445 (98 Stat. 655; 26 U.S.C. 1445), sec. 6012 (68A Stat. 732; 26 U.S.C. 6012), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954)

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§ 1.6012-2 Corporations required to make returns of income.

(a) *In general—(1) Requirement of return.* Except as provided in paragraphs (e) and (g)(1) of this section with respect to charitable and other organizations having unrelated business income and to certain foreign corporations, respectively, every corporation, as defined in section 7701(a)(3), subject to taxation under subtitle A of the Code shall make a return of income regardless of whether it has taxable income or regardless of the amount of its gross income.

(2) *Existence of corporation.* A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. A corporation is not in existence after it ceases business and dissolves, retaining no assets, whether or not under State law it may thereafter be treated as continuing as a corporation for certain limited purposes connected with winding up its affairs, such as for the purpose of suing and being sued. If the corporation has valuable claims for which it will bring suit during this period, it has retained assets and therefore continues in existence. A corporation does not go out of existence if it is turned over to receivers or trustees who continue to operate it. If a corporation has received a charter but has never perfected its organization and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return.

(3) *Form of return.* The return required of a corporation under this section shall be made on Form 1120 unless the corporation is a type for which a special form is prescribed. The special

forms of returns and schedules required of particular types of corporations are set forth in paragraphs (b) to (g), inclusive, of this section.

(4) *Disclosure of uncertain tax positions.* A corporation required to make a return under this section shall attach Schedule UTP, Uncertain Tax Position Statement, or any successor form, to such return, in accordance with forms, instructions, or other appropriate guidance provided by the IRS.

(5) *Effective/applicability date.* Paragraph (a)(4) of this section applies to returns filed for tax years beginning on or after January 1, 2010.

(b) *Personal holding companies.* A personal holding company, as defined in section 542, including a foreign corporation within the definition of such section, shall attach Schedule PH, Computation of U.S. Personal Holding Company Tax, to the return required by paragraph (a) or (g), as the case may be, of this section.

(c) *Insurance companies—(1) Domestic life insurance companies—(i) In general.* A life insurance company subject to tax under section 801 shall make a return on Form 1120-L, “U.S. Life Insurance Company Income Tax Return.” Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks.* Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120, “U.S. Corporation Income Tax Return,” and partial tax computed on Form 1120-L. The Form 1120-L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120-L.

(2) *Domestic nonlife insurance companies.* Every domestic insurance company other than a life insurance company shall make a return on Form 1120-PC, “U.S. Property and Casualty Insurance Company Income Tax Re-

turn.” This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a pro forma annual statement), including the underwriting and investment exhibit (or any successor thereto) for the year covered by such return.

(3) *Foreign insurance companies.* The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the pro forma annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically.* If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or pro forma annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See § 1.6001-1(e).

(5) *Definition.* For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a pro forma annual statement if the insurance company is not required to file the NAIC annual statement.

(d) *Affiliated groups.* For the forms to be used by affiliated corporations filing a consolidated return, see § 1.1502-75.

(e) *Charitable and other organizations with unrelated business income.* Every organization described in section 511(a)(2) which is subject to the tax imposed by section 511(a)(1) on its unrelated business taxable income shall make a return on Form 990-T for each taxable year if it has gross income, included in computing unrelated business taxable income for such taxable year, of \$1,000 or more. The filing of a return of unrelated business income does not relieve the organization of the duty of filing other required returns.

(f) *Subchapter T cooperatives—(1) In general.* For taxable years ending on or after December 31, 2007, a cooperative organization described in section 1381 (including a farmers' cooperative exempt from tax under section 521) is required to make a return, whether or not it has taxable income and regardless of the amount of its gross income, on Form 1120-C, "U.S. Income Tax Return for Cooperative Associations," or such other form as may be designated by the Commissioner.

(2) *Farmers' cooperatives.* For taxable years ending before December 31, 2007, a farmers' cooperative organization described in section 521(b)(1) (including a farmers' cooperative that is not exempt from tax under section 521) is required to make a return on Form 990-C, "Farmers' Cooperative Association Income Tax Return."

(3) *Effective/applicability date.* This paragraph (f) is applicable on or after July 30, 2007.

(g) *Returns by foreign corporations—(1) Requirement of return—(i) In general.* Except as otherwise provided in subparagraph (2) of this paragraph, every foreign corporation which is engaged in trade or business in the United States at any time during the taxable year or which has income which is subject to taxation under subtitle A of the Code (relating to income taxes) shall make a return on Form 1120-F. Thus, for example, a foreign corporation which is engaged in trade or business in the United States at any time during the taxable year is required to file a return on Form 1120-F even though (a) it has no income which is effectively con-

nected with the conduct of a trade or business in the United States, (b) it has no income from sources within the United States, or (c) its income is exempt from income tax by reason of an income tax convention or any section of the Code. However, if the foreign corporation has no gross income for the taxable year, it is not required to complete the return schedules but must attach a statement to the return indicating the nature of any exclusions claimed and the amount of such exclusions to the extent such amounts are readily determinable.

(ii) *Treaty income.* If the gross income of a foreign corporation includes treaty income, as defined in paragraph (b)(1) of § 1.871-12, a statement shall be attached to the return on Form 1120-F showing with respect to that income:

(a) The amounts of tax withheld,

(b) The names and post office addresses of withholding agents, and

(c) Such other information as may be required by the return form or by the instructions issued with respect to the form, to show the taxpayer's entitlement to the reduced rate of tax under the tax convention.

(iii) *Balance sheet and reconciliation of income.* At the election of the taxpayer, the balance sheets and reconciliation of income, as shown on Form 1120-F, may be limited to:

(a) The assets of the corporation located in the United States and to its other assets used in the trade or business conducted in the United States, and

(b) Its income effectively connected with the conduct of a trade or business in the United States and its other income from sources within the United States.

(2) *Exceptions—(i) Return not required when tax is fully paid at source—(a) In general.* A foreign corporation which at no time during the taxable year is engaged in a trade or business in the United States is not required to make a return for the taxable year if its tax liability for the taxable year is fully satisfied by the withholding of tax at source under chapter 3 of the Code. For purposes of this subdivision, some of the items of income from sources within the United States upon which the tax liability will not have been fully

satisfied by the withholding of tax at source under chapter 3 of the Code are:

(1) Interest upon so-called tax-free covenant bonds upon which, in accordance with section 1451 and §1.1451-1, a tax of only 2 percent is required to be withheld at source,

(2) In the case of bonds or other evidence of indebtedness issued after September 25, 1965, amounts described in section 881(a)(3),

(3) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (h) of §1.1441-4, is not subject to withholding of tax at source.

(b) *Corporations not included.* This subdivision (i) shall not apply:

(1) To a foreign corporation which has income for the taxable year which is treated under section 882(d) or (e) and §1.882-2 as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that corporation,

(2) To a foreign corporation making a claim under §301.6402-3 of this chapter (Procedure and Administration Regulations) for the refund of an overpayment of tax for the taxable year, or

(3) To a foreign corporation described in paragraph (c)(2)(i) of §1.532-1 whose accumulated taxable income for the taxable year is determined under paragraph (b)(2) of §1.535-1.

(ii) *Beneficiaries of estates or trusts.* A foreign corporation which is a beneficiary of an estate or trust which is engaged in trade or business in the United States is not required to make a return for the taxable year merely because it is deemed to be engaged in trade or business within the United States under section 875(2). However, such foreign corporation will be required to make a return if it otherwise satisfies the conditions of subparagraph (1)(i) of this paragraph for making a return.

(iii) *Special returns and schedules.* The provisions of paragraphs (b) through (f) of this section shall apply to a foreign corporation except that a foreign corporation which is an insurance company to which paragraph (c)(3) of this section applies shall make a return on Form 1120-F and not on Form 1120. If a foreign corporation which is an insur-

ance company to which paragraph (c) (1) or (2) of this section applies has income for the taxable year from sources within the United States which is not effectively connected for that year with the conduct of a trade or business in the United States by that corporation, the corporation shall attach to its return on Form 1120L or 1120M, as the case may be, a separate schedule showing the nature and amount of the items of such income, the rate of tax applicable thereto, and the amount of tax withheld therefrom under chapter 3 of the Code.

(3) *Representative or agent for foreign corporation—*(i) *Cases where power of attorney is not required.* The responsible representative or agent within the United States of a foreign corporation shall make on behalf of his principal a return of, and shall pay the tax on, all income coming within his control as representative or agent which is subject to the income tax under subtitle A of the Code. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a foreign corporation, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the foreign corporation. If the responsible representative or agent does not have a specific power of attorney from the foreign corporation to file a return in its behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such corporation but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required.* Whenever a return of income of a foreign corporation is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for

this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6062-1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation.* A return of income shall be required under this subparagraph only if the foreign corporation is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a foreign corporation, see section 882(c)(2) and the regulations thereunder, and paragraph (b) (2) and (3) of § 1.535-1.

(5) *Effective date.* This paragraph shall apply for taxable years beginning after December 31, 1966, except that it shall not be applied to require (i) the filing of a return for any taxable year ending before January 1, 1974, which, pursuant to instructions applicable to the return, is not required to be filed or (ii) the amendment of a return for such a taxable year which, pursuant to such instructions, is required to be filed. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012-2(g) (Revised as of January 1, 1967).

(h) *Electing small business corporations.* An electing small business corporation, whether or not subject to the tax imposed by section 1378, shall make a return on Form 1120-S. See also section 6037 and the regulations thereunder.

(i) *Items of tax preference—(1) In general.* Every corporation required to make a return under this section, and having items of tax preference (described in section 57 and the regulation thereunder) in an amount specified by Form 4626, shall file such form as part of its return.

(2) *Organizations with unrelated business income and foreign corporations.* Regardless of the provisions of paragraphs (e) and (g) of this section, any organization described in either such paragraph having items of tax preference

(described in section 57 and the regulations thereunder) in any amount entering into the computation or unrelated business income is required to make a return on form 990-T or form 120F, respectively, and to attach the required form as part of such return.

(j) *Other provisions.* For returns by fiduciaries for corporations, see § 1.6012-3. For information returns by corporations regarding payments of dividends, see §§ 1.6042-1 to 1.6042-3, inclusive; regarding corporate dissolutions or liquidations, see § 1.6043-1; regarding distributions in liquidation, see § 1.6043-2; regarding payments of patronage dividends, see §§ 1.6044-1 to 1.6044-4, inclusive; and regarding certain payments of interest, see §§ 1.6049-1 and 1.6049-2. For information returns of officers, directors, and shareholders of foreign personal holding companies, as defined in section 552, see §§ 1.6035-1 and 1.6035-2. For returns as to formation or reorganization of foreign corporations, see §§ 1.6046-1 to 1.6046-3, inclusive.

(k) *Effective/applicability date.* Paragraph (c) of this section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply paragraph (c) of this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.6012-2 as contained in 26 CFR part 1 in effect on April 1, 2006.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.6012-2, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts—(1) In general.* Every fiduciary, or at least one of joint fiduciaries, must make a return of income on form 1041 (or by use of a composite return pursuant to § 1.6012-5) and attach the required form if the estate or trust has items of tax preference (as defined in section 57 and the regulations thereunder) in any amount:

(i) For each estate for which he acts if the gross income of such estate for the taxable year is \$600 or more;